5219

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL

Property	:	**Flat 1, 7 Conegra Road, High Wycombe, Buckinghamshire, HP13 6DY,**
Applicant	:	**Mrs. B. H. Glass**
Respondent	:	**Mr. D. Stevens**
Case number	:	**CAM/11UF/LSC/2010/0019**
Date of Transfer	:	**21st January 2010**
Type of Application	:	**Application for a determination of liability to pay a service charge, pursuant to section 27A of the Landlord and Tenant Act 1985**
Date of Hearing	:	**27th July 2010**
Tribunal	:	**Mrs. J. Oxlade Mr. D. Brown FRICS MCI Arb Mr. A. Kapur**
Venue	:	**Clifton Lodge Hotel 210 West Wycombe Road High Wycombe Buckinghamshire HP12 3AR**
Attendees	:	**Stuart Edwards (Property Manager for Trust Limited) David Stevens (Lessee flat 1)**

DECISION

For the reasons given below we

1. Find that the following sums are reasonable and recoverable as service charges under the terms of the lease:

(a) insurance costs of £880.59 in 05/06, £906.88 in 06/07, £977.57 in 07/08, £1054.71 in 08/09, and £1050.50 in 09/10);
(b) managing agents fees of £400 plus VAT in 05/06, £600 plus VAT in 06/07, £700 plus VAT in 07/08 £863.64 in 2008/09 and £925.64 in 2009/10; these sums to include preparation of year end accounts.
(c) tree root clearance of £217.38, blocked drains £217.38, and refuse collection £211.50 in 05/06; £300 + vat in 06/07 for professional fees; Health Safety and Fire Risk Assessment £343.10 in 08/09; Asbestos Survey £270.25 in 09/10.

2. For the reasons given below we find that the following sums are not reasonable and so recoverable as service charges under the terms of the lease:

(a) £121.99 interest on unpaid service charges;
(b) £395.45 "repairs and maintenance";
(c) £124.45 late payment of Rentacure's bill for the dry rot; £681.50 for gardening;
(d) £65 for the Rentacure guarantee
(e) accountancy fees in 2008/2009 and 2009/2010 £184 and £141
(f) £390 Court costs.

3. We hereby transfer the case back to the County Court.

REASONS

Background

1. David Stevens is the Lessee of Flat 1, 7 Conegra Road, which is a first floor flat, contained within a semi-detached Victorian house divided into 4 flats.

2. The lease makes provision for the payment of service charges by the Lessees as a corollary of the maintenance/repair and insurance obligations imposed on the Lessor.

3. As envisaged by the lease, the Lessor's obligations have been carried out by Managing Agents: BLR until October 2006 and Trust since then.

Proceedings

4. In late 2009 on behalf of the Lessor Trust issued proceedings in the County Court against Mr. Stevens, for unpaid service charges for the year end 2007, 2008, and 2009, together with interest and court fees, totalling £2954.86. Mr. Stevens filed a defence, and in due course the application to transfer the case to the Leasehold Valuation Tribunal

("LVT") was granted, and we are told that those proceedings are stayed.

5. The Lessor also issued an application to the LVT for a determination as to the reasonableness of charges for those same years. That application was unnecessary, the LVT being seized of the matter as a result of the transfer.

6. Directions were made for the filing of evidence and preparation of Court bundles in readiness for the case to be heard on 27th July 2010. Regrettably, not only were the bundles delivered to the London Panel as opposed to the Eastern Panel in Cambridge, but they were also late, leaving the Tribunal little time to prepare the appeal. Happily, Mr. Stevens indicated that he had sufficient time to make his case, and so the application proceeded.

Inspection

7. Prior to the hearing we inspected the premises in the company of the Lessee and Mr. Edwards. The flat is in a house within a short walk of the Railway Station and Town Centre, set on the side of a reasonably steep hill. There are 3 parking spaces to the front at street level, and up a steep set of steps the house occupies a sloping plot with side access and up one further level a communal garden to the rear. The house is constructed of brick under a tiled roof in reasonable condition. We inspected the communal hallway which provided access to flats 1 and 4 and Flats 2 and 3 have separate entrances.

Hearing

8. At the outset of the hearing Mr. Edwards informed the Tribunal that the County Court proceedings were stayed and although accepted that the matter would be transferred back to the County Court, invited us to determine the County Court costs. He invited us to make a determination as to the reasonableness of service charges in the year end 2010. Mr. Stevens was content to deal with all matters, which included the service charges for the year 2009/2010. Although there was no lease in the bundle for Flat 1, we were told that it was identical to Flat 2, and so proceed on that basis.

9. Mr. Stevens indicated that at this stage he challenged every charge, because despite having repeatedly asked for explanations, he had not received them. Further, the invoices sent to him (i.e. the service charge demands) were impossible to understand, and fluctuated wildly, such that he could not understand what he owed.

10. We indicated that the LVT had determined the reasonableness of charges incurred in 2006 in respect of dry rot (and granted dispensation from the consultation requirements) and so we could not look at that matter – save to the limited extent of assessing the

reasonableness of charges billed subsequently (and so not determined by the LVT) for managing agents handling costs.

11. We therefore proceeded to consider the Scott Schedules prepared by Mr. Edwards for the years 2005/6, 2006/7, 2007/8, 2008/9, 2009/10, the supporting invoices, and heard explanations from Mr. Edwards as to the charges levied to the extent that he could answer them (bearing in mind some related to the BLR years, and under the Trust years he was not the property manager). The Tribunal asked questions, as did Mr. Stevens. We examined the provisions of the lease in order to assess what costs were recoverable, what information the Lessee was entitled to receive, and how the service charges were to be notified to the Lessee.

12. Over the short adjournment Mr. Stevens, at our request, returned home to furnish the Tribunal with the service charge demands for the purpose of checking that the demands complied with section 21 of the 1985 Landlord and Tenant Act 1985 ("the Act"). Having seen 3 in the years 2006, early 2007 and then late 2008, we are satisfied that the requisite information is provided on the reverse of the demands.

13. By the end of the hearing the following charges were not disputed:

    Mr. Stevens accepted as recoverable under the terms of the lease and reasonable (a) in 05/06 tree root clearance of £217.38, blocked drains £217.38, and refuse collection £211.50 (b) in 08/09 Health Safety and Fire Risk Assessment £343.10 (c) in 09/10 Asbestos Survey £270.25

    Mr. Edwards accepted that interest was not recoverable under the terms of the lease, so abandoning the claim for £121.99 and said that he was not seeking costs caused or occasioned by the Lessor by these LVT proceedings

14. The Tribunal indicated that we would make a decision on the day of the hearing and notify the parties in writing within a month.

Jurisdiction

15. The Tribunal has jurisdiction pursuant to section 27A of the 1985 Act to consider the whether service charges are recoverable under the lease, whether the works done and whether sums spent are reasonable. The relevant statutory provisions are attached as appendix 1.

Findings of Fact

Insurance

16. Mr. Stevens had obtained quotes for insuring his flat based on a valuation of £105,000, and said that the costs were about half what the Lessor charged him. He acknowledged when it was pointed out by Mr.

Edwards that this was not on a like-for-like basis, and would not cover the communal hallways, roof, and the like. It bothered him that the excess appeared to be quite high (£250), such that a claim for a damaged window was not worth making, and a claim had not been made against the policy when the dry rot was rectified in 2006. He made the point that the problem with a block policy was that it did not take into account the individual circumstances of the individual building, and he may be subsidising buildings where there were no owner occupiers. He accepted Mr. Edwards point that the Lessor would insure on a cautious basis that Lessees would sometime sub-let without the Lessor's knowledge and so insurance was taken out against this as a precaution.

17. Mr. Edwards had produced some of the insurance documents so that the essential terms were apparent. He said that brokers would search the market for the best policy on a block basis, and relied on the case of Berrycroft which did not limit the Lessor to the cheapest option, and sanctioned the block policy approach as suitable. Documents were filed (pages 28 and 31 of the bundle) showing that the brokers had gone to the market to research a suitable policy at a reasonable market price.

18. We observe that the evidence adduced by Mr. Stevens as to policy costs is not procured on a truly like-for-like basis, notably relying on sale price as opposed to re-building costs, and not insuring common parts. There is evidence that this insurance was procured and placed in the ordinary course of business, that the policy was standard in nature, and that the lease permits the Lessor some latitude in identifying the insurable risks. Using our knowledge and experience, together with the documentary evidence filed we are satisfied that the insurance costs for the entire period are reasonable (£880.59 05/26, £906.88 06/07, £977.57 07/08, £1054 08/09, and £1050.50 09/10).

Managing Agents Fees

19. Mr. Stevens was very concerned that neither BLR, nor their successors, Trust, had ever set out exactly what they were supposed to be doing i.e. their remit. He did not know what the charging structure was, nor what the costs would be if they asked for extra things to be done. Whilst there were bills charged to the Lessor, he did not know what the Managing Agents were contracted to do. We shared his concern that there was nothing in the bundle which set out their remit i.e. what either agent was promising to do.

20. Further, he was concerned that despite many attempts to contact the Managing Agents his letters and phone calls went unanswered. As no one ever explained what sums were going to be spent in any one year, or what had been spent, and as the invoices did not make sense, he did not know what he was paying for and could not get answers. He acknowledged that Trust had in some respects been better than BLR.

21. Mr. Edwards did his best to explain what BLR and Trust were supposed to do, but acknowledged that the handover from BLR was difficult, that documents were lost, that poor communication was a fair issue. However, his perspective was that things were a lot better under Trust, that they had kept out of hours appointments to try to meet with the Lessees, and tried to make some explanations. Mr. Edwards considered that the level of service was good for the managing agents charge.

22. We found that there was considerable force in Mr. Stevens submissions. We accept that invoices do not make sense, and we observe that had the Managing Agents followed the lease – by notifying the Lessee of the estimated costs for the forthcoming year and then a detailed account at the end – these communication problems could have been reduced. We were perplexed by Mr. Edwards explanation that Mr Stevens knew who the current property manager was – i.e. Mr Edwards – when in the next breath he told us that he was not managing the building. When then pressed he said he was. Equally, when pressed to explain why it was that Trust needed a second copy of the lease from the Land Registry in order to bring proceedings at a cost to the Lessee of £75, he said that the Managing Agents did have a copy of the lease to establish these Lessor's obligations, and then said that they could not possibly have every lease stored.

23. Much of the explanations were contradictory and unsatisfactory. Part of the difficulty arises because the Managing Agents have not adduced evidence of their remit. We have sympathy with the point that if they have not explained what they are supposed to do, how can it be said that they have earned their fee ? In respect of accountancy, which we will discuss later, it was not clear how Trust could charge for the provision of year end accounts, where one of the letters implied that the provision of "service charge account information" was part of their remit.

24. In assessing what Managing agents fees are payable we have therefore looked at what evidence there is of works done. We consider that for the years 05/06 BLR's fees should be limited to £400, having seen that they have been involved in insurance obligations, and with some other management issues i.e. drains blockage. Within that figure we accept that communications were poor, to Mr. Stevens considerable frustrations. We limit the fees in 06/07 to £600 and £700 in 07/08 for the same reasons, noting that Trust took over from October 2006, and things slightly improved. In subsequent years we allow £863.64 in 2008/09 and £925.64 in 2009/10. We consider that although communication was still poor, some attempts were made, that some works were arranged, and that accounts were prepared within that fee. Although there was much discussion about what the management fees included, in the absence of any contract, and in the light of the

correspondence on page 209, we consider that this annual fee included drawing up accounts. In light of our knowledge and experience, that the sums charged are in line with industry standards, and that a Rolls Royce service does not come on a Morris Minor budget.

Miscellaneous Items

25. In 2006/2007 the Lessor sought to recover:

- £395.45, which appears in the Scott Schedule as "Repairs and Maintenance", and yet there was no invoice supporting it, and Mr. Edwards did not know to what it related. In those circumstances we cannot be satisfied that it is recoverable or reasonable and so dis-allow that sum
- £124.45 which related to late payment of Rentacure's bill for the dry rot. There is nothing in the lease which suggested that such sums were payable, and had the Managing Agents built up a reserve (as the lease allows) then this would not have arisen. In the circumstances the sum is disallowed
- £681.50 for gardening which was supported by an invoice. However, despite BLR's procedures there is no evidence that expenditure over £500 was authorised. There is insufficient detail as to how much time was spent. We have seen the size of the garden, and established that at £10-£12 per hour this represents over 50 man hours. We accept the evidence of Mr. Steven that this did not happen – and his point was well made that for this amount of money a resident Lessee would notice gardening which was more than pulling up a handful of weeds. We are not satisfied that this work did actually take place and so we disallow the item
- £940 for professional fees for preparing the LVT proceedings. There is no itemisation of the time spent, by whom, or when. The hearing was a paper hearing and so did not involve attendance at a hearing. We have a copy of the decision and so have some information about what the papers contained. It was not clear how much of this time could have been double-counted as obtaining invoices, which could have fallen within the managing agents usual fees. Doing the best we can on the limited information we reduce this sum to £300 plus vat.

26. In 2007/2008 the Lessor sought to recover £65 for being supplied with a new copy of the Rentacure guarantee, which Mr. Edwards said had been lost. When pressed, Mr. Edwards said that he considered that it was fair and reasonable for the Lessees to pay the costs of getting a copy when the copy had been lost by the Managing Agents. We cannot agree, and dis-allow the sum in its entirety.

27. In 2008/2009 and 2009/2010 the Lessor sought to recover accountancy fees of £184 and £141. Initially Mr Edwards said that he

believed that Trust compiled the information and sent it to external accountants, and this was the external accountancy charge. When it was pointed out to him that the accounts were not certified by a company or individual and that there was an invoice showing that Trust was billing itself for the fees, he said that he had been mistaken, and was sure than 1 of 2 named individuals (who were accountants) had done the work. We did not find any of this evidence satisfactory. As Trust had never set out its remit, and in light of page 209, we are satisfied that the work is already covered by managing agents fees, and so dis-allow both sums.

Costs

28. Mr. Edwards sought to recover the costs incurred in the County Court, which he said were £390. We analysed the breakdown given. He could not explain why there was a fee for making a search of the Births, Marriage, and Deaths register or Electoral Roll; why the Lessee should pay a Land Registry fee when the Lessor could have been asked to provide a counterpart lease and when as Managing Agents they should have one so that they could carry out their work; why the Lessee should pay for the costs of carrying out a double-check. In our view, many of these costs were not reasonable.

29. The biggest downfall in the application for costs is that these proceedings could have been avoided. We accept Mr. Stevens evidence that the invoices were unfathomable and that is why he did not pay. It was of considerable concern to us that legally enforceable demands for money (which could lead to forfeiture of the lease) were so difficult to understand and (probably) highly inaccurate. We noted that running balances did not appear to be carried over in any logical way, and that despite no payments being made later balances were reduced. We accept that Mr. Stevens asked questions and got few (if any) satisfactory answers. The failure to answer basic questions remained by the end of the hearing, and we still had no clear evidence of what the managing agents fees covered. The claim includes interest, which the lease does not permit. The Managing Agents have never complied with the terms of the lease, to given estimated service charge for the forthcoming year. Largely the Managing Agents mis-handling of matters has resulted in Mrs. Stevens refusal to pay. In all the circumstances we make an order that the Applicant cannot recover the costs of bringing the proceedings in the County Court or before the LVT. We note that Mr. Edwards agreed that no costs would be added to the service charge account for his attendance at the hearing and preparation of the case.

<u>Conclusion</u>

30. For the reasons given above we therefore record that the following sums are reasonable and recoverable under the terms of the lease:

(a) insurance costs of £880.59 in 05/26, £906.88 in 06/07, £977.57 in 07/08, £1054 in 08/09, and £1050.50 in 09/10);
(b) managing agents fees of £400 plus VAT in 05/06, £600 plus VAT in 06/07, £700 plus VAT in 07/08 £863.64 in 2008/09 and £925.64 in 2009/10;
(c) tree root clearance of £217.38, blocked drains £217.38, and refuse collection £211.50 in 05/06; £300 + vat in 06/07 for professional fees; Health Safety and Fire Risk Assessment £343.10 in 08/09; in Asbestos Survey £270.25 in 09/10.

31. For the reasons given above we therefore record that the following sums are not reasonable and so recoverable under the terms of the lease:

(a) £121.99 interest on unpaid service charges;
(b) £395.45 "repairs and maintenance";
(c) £124.45 late payment of Rentacure's bill for the dry rot; £681.50 for gardening;
(d) £65 for the Rentacure guarantee
(e) accountancy fees in 2008/2009 and 2009/2010 £184 and £141
(f) £390 Court costs.

32. We hereby transfer the case back to the County Court.

.....

Joanne Oxlade (Chairman)

27th July 2010

Appendix 1

The jurisdiction of the Tribunal to consider the reasonableness and payability of service charges is as follows:

s27A of the 1985 Act provides that "an application may be made to a leasehold valuation tribunal ("LVT") for a determination whether a service charge is payable and, if it is, as to –

(c) the amount which is payable ...".

Section 19(1) of the 1985 Act provides that "relevant cost shall be taken into account in determining the amount of the service charge payable for a period –

(a) only to the extent they are reasonably incurred, and

(b) where they occurred on the provision of services or the carrying out of works, only the services or works are reasonable standard; and

the amount payable shall be limited accordingly".